

REMARKS

The Examiner is thanked for the thorough examination of the present application. The Office Action, however, continued to reject all examined claims 1-5, 11-15, and 21-25. In response, Applicant submits the foregoing amendments and the following remarks. In particular, claims 1-5, 11-15, and 21-25 have been amended. Claims 31-33 are newly added.

Rejections under 35 U.S.C 112

The Office Action rejected claims 3, 13, and 23, as well as claims 5, 15, and 25 under 35 U.S.C. § 112, second paragraph. Applicant has amended these claims to address and overcome the rejections. Accordingly, the rejections should be withdrawn.

Rejections under 35 U.S.C 101

Claims 1-5, 11-15, and 21-25 are rejected under 35 U.S.C. 101. These rejections have been rendered moot by the amendments made herein. In this regard, claims 1-5, 11-15, and 21-25 are amended to expressly recite machine-readable storage mediums, using language which has been deemed acceptable by the U.S. Patent Office in a number of issued patents.

As the U.S. Court of Appeals for the Federal Circuit recently confirmed in its *In re Bilski* — F.3d —, 88 U.S.P.Q.2d 1385 (2008) decision:

“... we ... reaffirm that the machine-or-transformation test ... is the governing test for determining patent eligibility of a process under 35 U.S.C. § 101.

...

The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that

his claim transforms an article.

The Court further stated:

In *AT&T*, we rejected a "physical limitations" test and noted that "the mere fact that a claimed invention involves inputting numbers, calculating numbers, outputting numbers, and storing numbers, in and of itself, would not render it nonstatutory subject matter." 172 F.3d at 1359 (*quoting State St.*, 149 F.3d at 1374). The same reasoning applies when the claim at issue recites fundamental principles other than mathematical algorithms. Thus, the proper inquiry under § 101 is ... whether the claim meets the machine-or-transformation test. As a result, ... a claim that purportedly lacks any "physical steps" but is still tied to a machine or achieves an eligible transformation passes muster under § 101.

The claims of the present application clearly satisfied these legal standards.

In addition, new claims 31-33 define systems including physical hardware structures, such as storage device for storing the risk database, a processor for executing the module, and/or a production line for manufacturing the IC products. It is believed the new system claims are patent-eligible subject matters under U.S.C. 101.

Rejections under 35 U.S.C 103(a)

Claims 1-5, 11-15 and 21-25 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Leachman et al. ("IMPreSS: An Automated Production-Planning and Delivery-Quotation System at Harris Semiconductor Corporation-Semiconductor Sector (1996) in view of Cargille et al. (U.S. Patent Publication No. 2003/0050817) and further in view of Shipman (U.S. Patent No. 5,819,232). Applicant respectfully requests reconsideration and withdrawal of these rejections.

In regard to claims 1, 11, 21 and 31-33, Leachman, Cargille and Shipman do not teach or suggest the claimed combinations. Leachman, Cargille and Shipman fail to disclose, suggest, or teach, *inter alia*, at least the following features of these claims (as amended):

*"dispatching **portions** of the low risk demand and the high risk demand to the first fabrication according to the expected quantity, and the first order rate and the second order rate"; and*
"the first quantity is less than the amount of the low risk demand, and the second quantity is less than the amount of the high risk demand".

In the claimed invention, in addition to the division of demand into high and low risk demands, **portions** of the low risk demand and the high risk demand are dispatched to the first fabrication according to the expected quantity, and the first order rate and the second order rate, wherein a first quantity of the low risk demand and a second quantity of the high risk demand are dispatched to the first fabrication, ***the first quantity is less than the amount of the low risk demand, and the second quantity is less than the amount of the high risk demand.*** This claimed feature is supported by the specification at least in page 9, line 17 to page 10, line 7. In the claimed embodiments, the demand from one client may be separately dispatched to different fabrications, so as to reduce the risk from a single demand (client), and balance the risk of different fabrications.

The Examiner asserts that the variable labels applied/used to describe various claim elements merely represent non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. In the claimed embodiments, however, in addition to the "labels", a demand is

divided into two demands, and portions of the respective two demands are dispatched to a fabrication are specifically disclosed. Leachman only relevantly discloses the division of forecasts into different classes with different priorities. Nowhere does Leachman disclose these claimed features.

Simply stated, Leachman, Cargille and Shipman collectively fail to teach the claimed features of the claimed embodiments. Thus, even if the references could be properly combined, the resulting combination still fails to disclose all features of the claimed embodiments. Accordingly, claims 1, 11, 21 and 31-33 are patentable over the cited reference. Insofar as all remaining claims depend from one of claims 1, 11, or 21, the rejections of all remaining claims should be withdrawn for the same reasons. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

In view of the foregoing remarks, the applicant respectfully requests the Examiner's reconsideration of the application and the timely allowance of claims.

CONCLUSION

For at least the foregoing reasons, all claims are in condition for allowance. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone the undersigned.

No additional fee is believed to be due in connection with this submission. If, however, any additional fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 20-0778.

Respectfully submitted,

/Daniel R. McClure/

Daniel R. McClure
Registration No. 38,962

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.

Suite 1500

600 Galleria Parkway S.E.

Atlanta, Georgia 30339

(770) 933-9500